Message

From: Rosen, Bailey [Rosen.Bailey@epa.gov]
Sent: 12/23/2020 7:52:12 PM
To: Bolen, Derrick [bolen.derrick@epa.gov]; Collazo Reyes, Yvette [CollazoReyes.Yvette@epa.gov]; Dekleva, Lynn [dekleva.lynn@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Fischer, David [Fischer.David@epa.gov]; Giddings, Daniel [giddings.daniel@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Hartman, Mark [Hartman.Mark@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Hughes, Hayley [hughes.hayley@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Keigwin, Richard [Keigwin.Richard@epa.gov]; Kochis, Daniel [Kochis.daniel@epa.gov]; Labbe, Ken [Labbe.Ken@epa.gov]; Layne, Arnold [Layne.Arnold@epa.gov]; Messina, Edward [Messina.Edward@epa.gov]; Mills, Madeline [Mills.Madeline@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; OPS CSID CB [OPS_CSID_CB@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Richmond, Jonah [Richmond.Jonah@epa.gov]; Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]; Sullivan, Melissa [sullivan.melissa@epa.gov]; Tyler, Tom [Tyler.Tom@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Vernon, Jennifer [Vernon.Jennifer@epa.gov]
Subject: OCSPP News for December 23, 2020

OCSPP News Round-Up

Toxics

- Bloomberg Law 12/23; EPA Ordered to Seek Broader Asbestos Data, Scrap 'Loopholes' (3)
- Bloomberg Law 12/22; N.Y. Lab Employees' Chemical Negligence Claims Move Ahead
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- Chemical Watch 12/23; US EPA imposes partial bans on five PBTs
- Inside TSCA 12/22; Judge Orders 'Unwilling' EPA To Mandate Asbestos Reporting Under TSCA
- Inside TSCA 12/22; Final PBT Rules Expand Proposed Use Waivers, Opening Door To Suits
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Pesticides

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- Bergeson & Campbell Blogs 12/23; EPA Publishes Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials
- Beyond Pesticides 12/21; Stop EPA from Limiting State Pesticide Restrictions as Corporate Deception on Hazards Continues
- Beyond Pesticides 12/23; Trump EPA Gives Neurotoxic Insecticide Chlorpyrifos Another Thumbs Up, Ignoring Brain Effects in Children
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- The Mesothelioma Center 12/23; Judge Rules EPA Must Tighten Asbestos Data Collection

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EPA Ordered to Seek Broader Asbestos Data, Scrap 'Loopholes' (3)
Ellen M. Gilmer, Bloomberg Law
https://news.bloombergiaw.com/environment-and-energy/epa-must-expand-gathering-information-on-asbestos-court-rules?context=search&index=1

The EPA must expand its information-gathering efforts on health risks related to asbestos, a federal court ruled Tuesday.

The Environmental Protection Agency's current approach contains multiple "loopholes" that prevent government officials from getting reliable industry information about the known carcinogen, the U.S. District Court for the Northern District of California ruled, siding with states and public health groups.

"These loopholes are large and cannot be cured by EPA's modeling efforts without sufficiently reliable and comprehensive raw data inputs," Judge Edward M. Chen wrote. "The EPA has not demonstrated it has a sufficient grasp of the universe of available information to determine it need do nothing further."

The EPA's Chemical Data Reporting rule, which governs the agency's information-gathering for studying chemicals' risks, includes provisions that effectively exempted some asbestos imports from reporting requirements.

"In light of these deficiencies, EPA has 'failed to articulate a satisfactory explanation' for its action, and its action is therefore arbitrary and capricious under the APA," Chen concluded, referring to the Administrative Procedure Act.

'Unequivocal Rejection'

"EPA cannot protect the public unless it has basic information on how much asbestos is entering the U.S. and where it goes," Linda Reinstein, president and co-founder of the Asbestos Disease Awareness Organization, said in a statement. "This win is an unequivocal rejection of EPA's weak and inadequate protection of public health from a substance that has taken hundreds of thousands of lives."

Reinstein's group, other public health organizations, and a coalition of states led by California last year challenged the EPA's denial of separate petitions they filed that pushed the agency to seek more information about how asbestos is imported into the U.S., where workers, consumers, and the general public could be exposed.

The states and groups argued the denial violated the Administrative Procedure Act and the Toxic Substances Control Act.

During oral arguments in November, attorney Robert M. Sussman argued on behalf of the health groups that collecting more information could help the EPA determine whether and how to regulate asbestos. Federal government lawyers countered that the EPA properly exercised its discretion in denying the petitions.

California Attorney General Xavier Becerra (D) called Tuesday's decision "a critical first step toward eliminating exemptions that allow this unsafe chemical to harm our communities, including our workers and children."

Massachusetts Attorney General Maura Healey (D) said: "The Trump administration's failure to use its authority to protect all of us from dangerous exposures to asbestos is as unconscionable as it is inexplicable."

Deficiencies

Chen ordered the EPA to amend its Chemical Data Reporting rule "to address the information-gathering deficiencies identified herein." He said he'll keep jurisdiction over the case to ensure compliance.

"As demonstrated herein, it is evident that the EPA does not know what it does not know, and its conclusion that closing the loopholes would yield nothing useful is not an informed one," the judge wrote.

The EPA said it's reviewing the decision.

Asbestos is imported by about 15 chemical manufacturers who use it to produce equipment they use to make chlorine and caustic soda.

The state attorneys general and health groups suing the EPA wanted the agency to require companies to report imports of asbestos itself, of the substance as a component in aftermarket brake parts and other products, and as a contaminant in products like children's crayons and cosmetics.

N.Y. Lab Employees' Chemical Negligence Claims Move Ahead
Sylvia Carignan, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/n-y-lab-employees-chemical-negligence-claims-can-proceed

Negligence and product liability claims against Brookhaven National Laboratory's contractors' use of trichloroethylene survived dismissal in a federal district court in New York.

Several former employees who worked at the Department of Energy lab on Long Island claimed extensive trichloroethylene use on the job led to their chronic illnesses and kidney failure. A judge in the U.S. District Court for the Eastern District of New York decided Monday that the statute of limitations and restrictions of a federal employee compensation program weren't valid reasons to dismiss some of the employees' claims.

The employees allege the lab delegated responsibility for safe handling of trichloroethylene, a cleaning solvent, to its contractors: Associated Universities Inc. and Brookhaven Science Associates LLC.

Products containing the chemical were manufactured, marketed, sold, and shipped by Dow Chemical Co. and Zep Inc., which are also defendants in the case, according to the court decision.

The contractors directed the employees to degrease and clean the lab's supercomputers with trichloroethylene, which each employee did nearly 100 times each day, the decision said.

The contractors should have used reasonable care to protect the surrounding environment from chemical contamination and implement sufficient safety protocols for the employees, according to one employee's complaint filed in the New York Supreme Court in 2019.

The defendants sought to dismiss the employees' claims based on the state's statute of limitations provisions that accrue when a person starts experiencing symptoms, not when a person discovers the cause of their symptoms. If that were the case, the employees would have been responsible for continually reviewing government reports, regulatory proposals, and media reports for indications that their illnesses might have resulted from their work, the court's decision said.

"Such obligations would redefine the phrase 'reasonably should have known,'" the decision said.

The employees claim the contractors stockpiled products containing trichloroethylene and oversaw their use for 16 years after the Department of Energy banned them due to their toxicity. If the defendants acted outside their capacity as government contractors, they may not be covered by the federal employee compensation program dedicated to Department of Energy workers, the court said.

The court denied the contractors' attempt to dismiss the employees' claims based on their coverage under the program, and allowed discovery on the issue.

Judge Gary R. Brown wrote the opinion.

Jacob D. Fuchsberg Law Firm LLP represented the former lab employees. Morgan, Lewis & Bockius LLP, Venable LLP, Babst, Calland, Clements and Zomnir PC, Walsh Pizzi O'Reilly Falanga LLP, and Phillips Lytle LLP represented Brookhaven Science Associates, Associated Universities, Zep and Dow Chemical.

The case is In re: Brookhaven National Laboratory Trichloroethylene cases, E.D.N.Y., No. 19-cv-4839, 12/21/20.

NGO report calls out brands 'neglecting toxic chemicals' in viscose production

Leigh Stringer, Chemical Watch
https://chemicalwatch.com/195535/ngo-report-calls-out-brands-neglecting-toxic-chemicals-in-viscose-production

Clothing brands and retailers are increasingly turning to products made with viscose as a sustainable alternative to synthetic materials, but the chemicals used in the process can be harmful to workers and the environment, according to an NGO report.

Viscose manufacturing relies on a "number of highly toxic and corrosive chemicals", according to the Dirty Fashion: Crunch Time report released by Netherlands based Changing Markets Foundation.

Back in 2018 the NGO drew up a roadmap with guidelines to shift the fashion industry towards processes that use a closed-loop manufacturing system to contain the chemicals.

Viscose is a semi-synthetic material derived from wood pulp, and can be treated and spun into yarns to make clothing, upholstery and other textiles.

The main substances of concern in the manufacturing process are:

•sodium hydroxide (also known as caustic soda), used to purify the cellulose. The EU's Classification, Labelling and Packaging (CLP) Regulation says the substance causes severe skin burns and eye damage;
•carbon disulphide, used to transform the purified cellulose into cellulose xanthate. Carbon disulphide is suspected to be toxic to reproduction according to Echa and the US EPA says neurotoxic effects have been observed in chronic human and animal inhalation studies; and
•hydrogen sulphide is used during the spinning process and is also generated as a byproduct. According to the CLP Regulation, hydrogen sulphide is fatal if inhaled, and is "very toxic to aquatic life".

If poorly managed, "these chemicals can pollute the water, air and soil around the factories, which can be devastating for factory workers, local communities and the ecosystems," the report says.

It calls out a number of apparel brands who it says have not publicly committed to improving the manufacturing of viscose along their supply chains.

The report says that "among the worst are a combination of luxury brands and low-cost retailers, including Armani, Costco, Dolce & Gabbana, Forever 21, Prada, TJ/TK Maxx, Versace and Walmart".

Prada told Chemical Watch that it has been using Forest Stewardship Council (FSC) viscose for many years and this is now representing a growing percentage of the total viscose consumed. However, the FSC certification does not cover the use and management of chemicals during production, other than certain pesticides. The company did not respond to questions on whether it does, or would, commit to action on the chemicals highlighted by the report.

Walmart declined to comment. Armani, Costco, Dolce & Gabbana, Forever 21, TJ/TK Maxx and Versace did not respond by the time of publishing.

Roadmap
The Changing Markets Foundation developed a Roadmap towards responsible viscose manufacturing, which it launched almost three years ago. This, the NGO says, provides a blueprint for responsible viscose manufacturing by setting out principles for brands, retailers and producers to move towards a closed-loop manufacturing system.

The principles call for emission controls and chemical recovery rates to be in line with EU best available techniques. The EU's BAT defines the most effective techniques for achieving environmentally responsible production of synthetics and cellulose-based fibres, including viscose.

To date, the Roadmap has 15 signatories: ASOS, C&A, Esprit, George at Asda, H&M, Inditex, Levi's, Marks & Spencer (M&S), Morrison's, New Look, Next, Sainsbury's, Tesco, Puma and Reformation. These companies have made a public pledge to improve viscose manufacturing by 2023–25, and have committed to publishing their viscose suppliers.

EPA proposes near doubling of TSCA fees for future risk evaluations
Terence Hyland, Chemical Watch
https://chemicalwatch.com/195302/epa-proposes-near-doubling-of-tsca-fees-for-future-risk-evaluations

The US EPA has proposed multiple changes to its TSCA fees programme, including hiking risk evaluation fees from $1.35m to $2.56m for each high-priority substance.

Under the proposal companies would be allocated their share of the costs based on the volume of the substance undergoing evaluation it produces.

The proposal would also add three new types of fees to the eight current categories, and expand the number of exemptions categories from the three it announced in March to six.

Proposed exemptions from TSCA fees would apply to companies that:

•import a high-priority substance in an article;
•produce a high-priority substance as a byproduct;
•produce or import such a substance as an impurity;
•produce one as a non-isolated intermediate;
•only utilise a high-priority substance for research and development activities; or
•manufacture less than 2,500lbs of such a substance.

The proposal – issued in pre-publication form on 21 December – is the opening step in the agency's reassessment of the 2018 rule that set out the TSCA fees structure. The law requires that the fees be reassessed and adjusted as necessary every three years, as needed.

The EPA did not propose changes to existing fees for TSCA section 4 testing or new substance applications under TSCA section 5, maintaining the current $9,800 fee for test orders and the $16,000 fee for new substance applications. The agency also said it was not proposing changes to its definition of small business entities, which remain eligible for an 80% discount on certain fees.

However, the EPA did add three additional types of activities to which fees would apply, including:

•$9,800 for amended test orders;
•$500 for a bona fide notice of intent to manufacture or import, used to obtain written determination of whether a chemical substance is included in the confidential inventory; and
•$500 for a notice of commencement of manufacture or import.
The agency will accept comments on the planned changes for 45 days following the proposal's formal publication in the Federal Register. A final rule is due in October 2021.

Companies potentially subject to the TSCA fees include manufacturers, importers, distributors, processors and entities required to submit information under sections 4 or 5 of TSCA. Potentially affected entities specifically mentioned by the EPA included chemical manufacturers, petroleum and coal companies and chemical, petroleum and merchant wholesalers.

Expanded fees and flexibility
The EPA said it used cost data gathered over the last two years, rather than estimates, to update the fee calculations.

Fees for future EPA-initiated risk evaluations would nearly double under the proposal, from $1.35m per high-priority substance to $2.56m. The agency also proposed additional fees for manufacturer-requested risk evaluations, with two payments, rather than one initial payment, required and a final payment due upon completion of the evaluation.

In addition to providing more exemptions from the fees, the agency also provided additional flexibility and time to pay.

The agency proposed allocating fees for a section 6 risk evaluation based on each large manufacturer's percentage of the total volume of the substance produced, after first allocating fees for small businesses.

"The EPA believes this approach for calculating TSCA section 6 fee allocations will result in a more representative distribution of fees and better account for the wide variation in production volume sometimes associated with a particular chemical substance," the agency said in the proposal, but it acknowledged that carving out small manufacturers from the calculation could result in those entities paying higher fees if they produce more than other manufacturers.

Extra time
The EPA also proposed additional time for companies to make the payments, with a two-part payment installment process.

Under the proposal, 50% of the fee assessed for a section 6 risk evaluation would be due within 180 days after the agency publishes the final scope of a chemical risk evaluation, with the remainder due 545 days after the final scope is published.

The 2018 rule called for the total amount of fees to be paid within 120 days, although the agency recently said it would allow companies subject to fees for the 20 chemicals currently undergoing TSCA risk evaluations to make 'incremental payments' with an extra eight months to pay the full amount.

The agency said it also would allow for corrections to be made to the list of manufacturers subject to EPA-initiated risk evaluations after the final list is published. This is what the EPA did this time around, publishing the final list of fee payers in September, and updating the list in late-November.

In addition to extra time to pay the risk evaluation fees, the agency's proposal would provide additional time for companies subject to fees for a section 4 test rule or a section 6 risk evaluation to form consortia to determine an equitable division of fee responsibilities. Companies would have 90 days – up from the current 60 days – to notify the EPA of their intent to form a consortium.

US EPA imposes partial bans on five PBTs
Terence Hyland, Chemical Watch
https://chemicalwatch.com/195892/us-epa-imposes-partial-bans-on-five-pbts

The US EPA has finalised rules to ban, or restrict, most uses of five persistent, bioaccumulative and toxic (PBT) substances that were subject to fast-tracked action under the 2016 revisions to TSCA.

The final rules, released in pre-publication form on 22 December, follow the agency's June 2019 proposal that envisioned partial bans on four of the PBTs. In the final rules (see box), the EPA has added restrictions on the fifth substance – the solvent hexachlorobutadiene (HCBD) – for which the agency had previously proposed no regulatory action under TSCA.

The five substances are:

•decabromodiphenyl ether (decaBDE), a flame retardant used in televisions, computers, textiles and other applications;

•phenol isopropylated phosphate (3:1), also known as PIP (3:1), used as a flame retardant in consumer products, as a plasticiser and as a lubricant and hydraulic fluid;
•2,4,6-tris(tert-butyl) phenol (2,4,6-TTBP), a reactant in processing that is also used as an additive in fuels and lubricants;
•pentachlorothiophenol (PCTP), used to make rubber more pliable; and
•hexachlorobutadiene (HCBD), used as a solvent and as a hydraulic, heat transfer or transformer fluid, and can be produced as a byproduct during the manufacture of chlorinated hydrocarbons.

Companies that manufacture, process, distribute or sell any of the substances could face significant impacts from the rules.

The 2016 Lautenberg Act directed the EPA to take expedited action on specific PBTs, by skipping the risk evaluation process and proceeding directly to risk management efforts to reduce potential exposures.

"By working with a wide variety of stakeholders, we were able to put in place restrictions on five PBT chemicals that will protect our families and our environment," EPA Office of Chemical Safety and Pollution Prevention Assistant Administrator Alexandra Dapolito Dunn said.

The EPA initially issued a single proposal for the five PBT substances but, in its final actions, opted to issue five separate rules for each of the chemicals.

And, while the EPA initially proposed having many of the restrictions take effect 60 days after publication, the final rules provide extended time for compliance for certain industries and uses of the substances.

The agency said it would soon open a public comment period on a recently completed manufacturer request for the EPA to conduct TSCA risk evaluations on additional PBTs – a group of ethanones used.

Judge Orders 'Unwilling' EPA To Mandate Asbestos Reporting Under TSCA
Maria Hegstad, Inside TSCA
https://insideepa.com/tsca-news/judge-orders-unwilling-epa-mandate-asbestos-reporting-under-tsca

A federal judge has ordered EPA to amend its Chemical Data Reporting (CDR) rule to require companies importing or using asbestos to report information about those uses to the TSCA program, after finding the agency acted unlawfully in denying Democratic states' and public health advocates' petitions asking officials to do so.

"EPA is not incapable of collecting this information; instead, it is unwilling to do so," Judge Edward Chen of the U.S. District Court for the Northern District of California wrote in a scathing Dec. 22 order granting the states' and environmentalists' motions for summary judgement and denying EPA's cross-motion for summary judgement.

"EPA's unwillingness to act stands in the face of its significant statutory authority to require that this information be reported via the CDR rule and runs contrary to its obligation to collect reasonably available information to inform and facilitate its regulatory obligations under TSCA. By failing to do so, the EPA has not acted in accordance with law."

The ruling marks just the latest loss the Trump EPA has drawn from Chen in its efforts to implement the revised Toxic Substances Control Act (TSCA).

His decision will also likely hand the incoming Biden administration an opportunity to require such reporting and bolster the plaintiffs' efforts to strengthen any EPA risk evaluation of asbestos -- in the event Congress does not step in to mandate regulatory action.

The two consolidated cases -- Asbestos Disease Awareness Organization (ADAO) et al v. EPA and State of California et al v EPA -- stem from EPA's denial of a pair of petitions plaintiffs submitted to EPA under the citizen petition provisions of TSCA section 21.

They sought to reverse EPA's decision exempting asbestos from CDR reporting because it is a naturally occurring substance.

EPA regularly uses CDR data for its exposure analyses because for many TSCA chemicals, the CDR data is all that it has. CDR reports generally include information such as how much of a chemical is produced at various facilities, how much is imported into the country, and how many workers could be exposed.

But the agency denied the petitions, arguing it was within its discretion to do so. It charged that subjecting asbestos to CDR reporting would not result in submission of new information to which the agency lacked access and that the information would not arrive at the agency in time to inform its ongoing TSCA evaluation of asbestos.

"EPA declined the petition's request to collect more information about asbestos-containing articles even though the petition accurately described how little information EPA has about the quantities of asbestos-containing products in the U.S. chain of commerce and the overall consumer and occupational exposure for downstream uses of asbestos," Chen writes. "EPA declined to collect more information about asbestos impurities without seriously analyzing whether companies had access to reasonably ascertainable third-party testing from suppliers."

Administrative Procedure Act

The litigation has already set a precedent when Chen ruled in 2019 for the suit to proceed under the Administrative Procedure Act (APA), rather than TSCA, allowing for the possibility of more speedy action but limiting the court's review to the administrative record.

In his Dec. 22 order, Chen notes that along with other case law, his decision in is based in part on the Supreme Court's 1971 decision in another APA case, Citizens to Preserve Overton Park v. Volpe. "By failing to consider all 'relevant factors' in its information-gathering efforts, the EPA has also acted arbitrarily and capriciously," Chen writes, referencing Overton Park.

As a result, Chen directs EPA "to amend its CDR reporting rule pursuant to its authority under . . . Section 8(a) of TSCA, to address the information-gathering deficiencies identified herein." And he writes that he will "retain jurisdiction for purposes of ensuring compliance."

Further, Chen finds the agency's "decision not to collect the information which the Plaintiffs contend should be collected via the elimination of the CDR exceptions did not come after taking a 'hard look' at the value and availability of the additional information the EPA has forsaken." Chen concludes the Supreme Court's 2004 decision in another prior APA case, Norton v. Southern Utah Wilderness Alliance, requires federal agencies "to take a hard look at the proffered evidence." Chen finds that EPA did not do so.

Chen's ruling is not wholly surprising. At the hearing last month over plaintiffs' and EPA's opposing motions for summary judgement, Chen appeared to leave the door open to plaintiffs' arguments, suggesting the states may have standing to sue while environmentalists may be able to make extra-record arguments -- both issues EPA opposed. During the Nov. 12 hearing, Chen considered the "paradox" of whether he could consider documents outside the record that bolster the plaintiffs' case while also appearing doubtful of EPA's arguments that the handful of states led by Democrats bringing the suit do not have standing.

Specifically, ADAO's summary judgement argument cited EPA science advisors' critique of the agency's draft TSCA risk evaluation of chrysotile asbestos to buttress their litigation -- even though the advisors' report was issued after the litigation began and is not part of the record. They argued the Science Advisory Committee on Chemicals' (SACC) report criticizing EPA's draft evaluation for lacking a host of data -- and calling for EPA to redo it -- undercut officials' claims that adding asbestos to the CDR was not needed.

Chen references the SACC report in his ruling, noting that "EPA declined to collect more information about asbestos processors, instead relying on the type of voluntary reporting that its scientific advisors deem inadequate in the SACC Report."

In a statement, ADAO welcomed the ruling. "Judge Chen's decision could not be clearer that EPA lacks basic information on asbestos exposure and risk and has no credible excuse for failing to use its TSCA reporting authority to fill these glaring gaps in understanding," said ADAO's counsel, Robert Sussman.

"As the [SACC] found, this lack of knowledge is among the many serious flaws in the Draft Risk Evaluation for Asbestos and demonstrates that EPA is failing to provide the protection against this lethal substance that Congress demanded when it amended TSCA in 2016."

Final PBT Rules Expand Proposed Use Waivers, Opening Door To Suits
David LaRoss, Inside TSCA
https://insideepa.com/tsca-news/final-pbt-rules-expand-proposed-use-waivers-opening-door-suits

EPA's has issued precedent-setting rules governing five persistent, bioaccumulative and toxic (PBT) chemicals that generally follow its 2019 proposal, though the final measures regulate hexachlorobutadiene (HCBD), which the agency had initially sought to exempt, while also granting new or expanded use waivers for several other chemicals.

As such, the rules -- which Trump EPA officials have touted as setting a precedent for future risk management actions -- will almost certainly face litigation from environmentalists, who have argued strenuously against the kind of broad use waivers the agency has granted.

"We strongly urge EPA to ban all uses of the five PBT chemicals, subject only to narrow and time-limited exceptions to the extent authorized by TSCA section 6(g)," they wrote in 2019 comments.

Given such threats, the rules will also likely feature in the incoming Biden administration's efforts to rescind -- or strengthen -- Trump administration regulations.

EPA Administrator Andrew Wheeler Dec. 21 signed the five PBT rules, meeting a statutory deadline in section 6(h) of the reformed Toxic Substances Control Act (TSCA) to take final action regulating chemicals that it previously identified as PBT.

Exiting EPA toxics chief Alex Dunn has said the proposed versions of the PBT rules are "a great example of what I think you will see more of from EPA" as that agency moves to regulate unreasonable risks from a range of existing chemicals it is evaluating.

She noted the proposal includes "a range" of chemical management strategies, including concentration restrictions and container management strategies. "I believe it shows that when we're talking about managing exposure and risk, there are lots of ways to do it under TSCA," she told the Environmental Law Institute in 2019.

As such, the rules generally maintain proposed bans on the "processing and distribution in commerce" of four PBTs, subject to various exemptions for certain sectors and uses: phenol, isopropylated phosphate, or PIP (3:1), a flame retardant, decabromodiphenyl ether (DecaBDE), another flame retardant, 2,4,6-tris(tert-butyl)phenol (TTBP), used as an additive in fuels, oils and hydraulic fluid, and Pentachlorothio-phenol (PCTP), used to make rubber more pliable in industrial uses, and in some consumer items like golf balls.

And while EPA dropped its plan to take no action at all on HCBD -- which is toxic to various plants and animals and a possible human carcinogen, but used as a solvent and in the manufacture of rubber compounds and lubricants -- the agency exempted from regulation the production of HCBD as a byproduct in chlorinated solvent manufacturing, and its disposal by incineration -- which it says make up "most" occurrences of the chemical.

"EPA is prohibiting the manufacturing (including import), processing, and distribution in commerce of HCBD and HCBD-containing products or articles, except for the unintentional production of HCBD as a byproduct during the production of chlorinated solvents, and the processing and distribution in commerce of HCBD for burning as a waste fuel," reads EPA's summary of the rule.

The rule itself notes that those exemptions will allow most industrial activity related to HCBD to continue, while only barring new applications.

"This final rule allows the current, highly regulated, unintentional production as a byproduct and incineration and distribution for incineration of such byproduct to continue and ensures that other uses do not commence," the HCBD rule says.

Environmentalists had urged EPA to instead regulate those existing uses as well as prohibiting new ones -- a stance some in industry expected the agency would adopt based on its recent moves to tighten final TSCA evaluations in response to comments alleging that the proposed versions were not conservative enough.

Use Exemptions

EPA in its new rule instead says any exposures to HCBD in the process of disposal or from air releases are properly regulated under waste-disposal laws or the Clean Air Act's air toxics program -- maintaining the Trump administration's position, opposed by environmentalists, that TSCA regulations should address only avenues of chemical exposure not already considered by other programs.

"In view of these comprehensive, stringent programs for addressing disposal and air releases, EPA determined that it is not practicable to impose additional requirements under TSCA on the disposal and air releases of the HCBD byproduct," the rule says.

Similarly, the other four PBT rules that EPA signed on Dec. 21 either maintain the agency's proposed limits on the chemicals' use rather than tightening them or add new exclusions in response to industry requests -- with most of those in the rules governing decaBDE and PIP (3:1).

For example, the PIP 3:1 rule maintains proposed exemptions for aviation hydraulic fluids, lubricants and grease and auto parts, while adding exemptions for military hydraulic fluids, aerospace parts, cyanoacrylate glue, locomotive and marine air filters, and "sealants and adhesives."

And in response to the company Fujifilm's petition for a critical use exemption that would allow continued use of already-produced film made with PIP (3:1), the agency agrees to delay its prohibition on that sector until Jan. 1, 2022, reasoning that "an immediate prohibition would require the commenter to dispose of the product all at once thereby increasing the incremental exposure from the disposal of film articles."

However, that provision could draw a legal challenge from environmentalists. Several groups warned that granting Fujifilm's request, or a separate petition filed by the firm Hempel related to the substance's use in flame-retardant coatings that the agency apparently did not address, would be unlawful without a new notice-and-comment rulemaking process.

Meanwhile, the decaBDE rule adds a two-year waiver for use of the substance in wire and cable insulation for nuclear power plants, and a waiver for replacement motor vehicle parts through 2036 or the end of the vehicles' service lives, "whichever is earlier."

It maintains a proposed three-year waiver for use of the chemical in new aerospace vehicles -- and adds a lifetime waiver on parts for those vehicles; an 18-month waiver for curtains in the hospitality industry; and a permanent waiver

for recycling plastic made with decaBDE before its ban "so long as no new decaBDE is added during the recycling or production process."

Lower Threshold

For the 2,4,6-TTBP rule, EPA originally proposed to ban distribution of products containing the chemical in containers less than 55 gallons in volume, as a way to "effectively prevent the use of 2,4,6-TTBP as a fuel additive or fuel injector cleaner by consumers and small commercial operations (e.g., automotive repair shops, marinas)."

The final rule maintains that goal but makes it more lenient in two ways: by dropping the threshold for regulation to 35 gallons, and by adding that only compounds containing at least 0.3 percent 2,4,6-TTBP by weight are covered.

However, the final version also adds a ban on any "oil or lubricant additive" containing at least 0.3 percent of the substance, "regardless of container size."

It is unclear whether that will satisfy critics, such as House Energy and Commerce Committee Chairman Frank Pallone (D-NJ), who called the original plan limiting container size "a shockingly glib proposal that provides the chemical industry with a glaring loophole for continued largescale use."

Finally, the PCTP rule maintains -- apparently without substantive changes -- the proposed ban on manufacture and sale of items containing at least 1 percent PCTP.

SBA to host roundtable on perc, IRIS handbook
NA, Inside TSCA
https://insideepa.com/tsca-takes/sba-host-roundtable-perc-iris-handbook

The Small Business Administration's Office of Advocacy (SBA) has announced it will host an environmental roundtable in January on EPA's final TSCA risk evaluation of perchloroethylene (perc or PCE) as well as discuss a handbook EPA recently released for public comment and peer review of its controversial IRIS assessment program.

SBA announced Dec. 21 that it will hold the roundtable virtually on Jan. 8.

The agenda includes a presentation by Tyler Lloyd of EPA's toxics office on the final perc evaluation. The presentation will likely preview EPA's regulatory options for limiting unreasonable risks posed by the solvent under the revised Toxic Substances Control Act (TSCA).

The scheduled event comes on the heels of EPA's Dec. 14 release of its final evaluation of perc, finding that 59 of 61 evaluated uses of the chemical pose unreasonable risks that the agency must regulate.

The final perc evaluation -- the sixth among the first batch of 10 the agency plans to complete before the end of the year -- finds "unreasonable risks to workers and occupational non-users (ONUs) when domestically manufacturing or importing the chemical; processing the chemical for a variety of uses; and when used in a variety of industrial and commercial applications," EPA's non-technical summary states.

"This also includes unreasonable risks to consumers from all consumer uses, and when exposed to dry cleaned articles, and to bystanders for most consumer uses."

These risks were associated with health effects including "neurotoxicity from acute exposures and neurotoxicity, kidney, liver, and immune, and developmental effects, and liver cancer from chronic exposures."

Meanwhile, the agenda also includes two speakers -- Andrew Kraft, of EPA's research office, and Kevin Bromberg, a consultant who retired from SBA -- on the draft Integrated Risk Information System (IRIS) handbook. EPA has publicly released the draft for comment and peer review by the National Academy of Science:

EPA last month quietly released the long-sought IRIS handbook, detailing standard operating procedures for research office staff developing IRIS chemical hazard assessments, a program the Trump EPA has sought to sideline while boosting the nascent TSCA chemical evaluation program within EPA's toxics office.

Among other things, the draft handbook details the IRIS program's approach to conducting systematic reviews, a method for assessing the quality of studies used in risk assessments, as well as a first-time system for classifying chemicals' non-cancer risks.

Both issues reportedly delayed release of the draft document because of concerns from agency officials overseeing the TSCA program -- but at least one industry attorney is predicting the IRIS program will come to the fore again with the incoming Biden administration.

EPA tightens lead dust standards that environmentalists say don't go far enough
RACHEL FRAZIN, The Hill
https://thehill.com/policy/energy-environment/531200-epa-tightens-lead-dust-standards-while-environmentalists-want-more

The Environmental Protection Agency (EPA) on Monday tightened standards for how much lead can remain as dust on surfaces such as floors and window sills after lead removal activities, in a move that environmentalists said doesn't go far enough.

The agency argued that its move will better protect children from dangerous exposure to lead, which can damage the brain and nervous system and slow growth and development.

"This overdue regulation is yet another example of the Trump Administration's commitment to reduce sources of lead exposure and to provide a healthier environment for our children," said EPA Administrator Andrew Wheeler in a statement.

Opponents, however, pointed to agency calculations showing measurable effects on children who are exposed to lead at the level set by the new standard.

"How can EPA say this designates a safe level when kids are going to be losing IQ points if they have that level of lead in their homes?" asked Eve Gartner, the managing attorney for Earthjustice's Toxic Exposure and Health Program.

Earthjustice is suing the EPA over its similar hazard standard, issued last year, and Gartner said a legal challenge to the new standard is likely.

Two sets of standards govern how much lead dust on surfaces is considered safe. A "hazard" standard makes an initial safety determination, and a "clearance level" standard determines safety levels after action is taken to remove lead deemed hazardous.

Monday's final rule brings the "clearance levels" standards down to the same limits that are set by the hazard standard: 10 micrograms of lead in dust per square foot on floors and 100 micrograms per square foot for window sills.

Gartner argued that the standards for after-lead removal activities should be lower than the hazard standard to create a "margin of safety."

"You don't really want the clearance standard to be exactly the same as the hazard standard because then if a tiny bit more dust gets added, then you've exceeded the hazard," she said.

EPA faces lawsuits over dicamba, glyphosate and pesticide exclusion zones
Steve Davies, Agri-Pulse
https://www.agri-pulse.com/articles/15057-epa-faces-lawsuits-over-dicamba-glyphosate-application-exclusion-zone

The Environmental Protection Agency's decision to register dicamba for use on soybeans and cotton is facing another lawsuit from the same groups that succeeded in convincing the 9th U.S. Circuit Court of Appeals to vacate registrations earlier this year.

The lawsuit by environmental groups and the National Family Farm Coalition is the latest to take on the agency for its dicamba decision. The American Soybean Association and Plains Cotton Growers also have challenged the decision, alleging that expanded buffer zones to protect endangered species and downwind crops from dicamba applications will severely cut into their crop acreage and that cutoff dates will heighten weed pressure.

In addition, a group of states has filed a lawsuit challenging the agency's rule on application exclusion zones, which are required to protect people in areas where pesticides are being applied. And environmental groups last week filed their opening brief in 9th Circuit litigation seeking to block EPA's registration for glyphosate.

The Center for Food Safety, Center for Biological Diversity, Pesticide Action Network North America joined the National Family Farm Coalition in filing a petition in the California-based appeals court Monday, seeking an order vacating five-year unconditional registrations for the dicamba herbicides Xtendimax and Engenia, registered by Bayer and BASF, respectively, and the extension of the registration for Syngenta's Tavium.

They contend EPA did not provide "substantial evidence" under the Federal Insecticide, Fungicide, and Rodenticide Act that use of the herbicides would not cause "unreasonable adverse effects," or consult under the Endangered Species Act with federal wildlife agencies about impacts on endangered species.

Nor did EPA provide the public an opportunity to comment on a decision contained in a footnote in the registration decision to eliminate the longstanding use by state pesticide agencies of a FIFRA provision that has allowed agencies to restrict pesticide use within state borders, including the use of cutoff dates for spraying. State pesticide agencies have expressed their opposition to the change.

The groups' petition to the 9th Circuit does not go into extensive detail about their legal claims, which will be expanded on when the case goes to briefing. In a news release announcing the suit, they said EPA "again failed in its legal duties to ensure that the pesticide would not cause unreasonable harm to farmers and farming communities as well as to the environment and hundreds of endangered species."

"Less than six months ago, the Ninth Circuit resoundingly rejected Monsanto's and EPA's arguments about this pesticide, detailing its substantial drift harms," said George Kimbrell, legal director of Center for Food Safety and counsel in the case. "Rather than do what the law and science requires, the Trump administration has again unlawfully promoted pesticide corporations' profits over protecting the interests of farmers or the environment. So they are getting what they deserve this holiday season: coal in their stockings and a federal lawsuit."

The 9th Circuit's decision in June vacating registrations for Xtendimax and Engenia found EPA had substantially understated or failed to consider the social and economic costs of allowing continued use of the herbicides. The court ultimately did not issue a specific order prohibiting use for the rest of the growing season, and EPA said existing stocks could be used.

Syngenta, Bayer and BASF pushed back on the lawsuit. Syngenta said it was reviewing the complaint but said, "Regarding steps taken for drift, Tavium is the first and only dicamba premix herbicide on the market [and] delivers a combination

of dicamba and S-metolachlor, offering two effective sites of action for control of key weeds in dicamba-tolerant soybeans and cotton," Syngenta's Paul Minehart, head of crop protection communications for North America, said.

Minehart noted EPA has required that a volatility reduction agent be included with all applications, extended buffer zones required for applications, and imposes cutoff dates of June 30 for soybeans and July 30 for cotton. "Throughout the first part of 2021, Syngenta will be running several Dicamba specific training webinars," he said, providing a web link.

Bayer, meanwhile, said it also was looking at the lawsuit, which it said "has no immediate impact on our ability to bring XtendiMax to growers this season or on growers' ability to use XtendiMax this season. Growers have been clear how vitally important this tool is for their weed-management programs."

The company said the latest registration decision "is based on a significant amount of additional data and learnings from recent seasons, and the new product label includes new measures to help growers use the product even more successfully going forward. We believe this new registration and product label effectively address the concerns raised by the court earlier this year."

BASF said it was aware of the petition and that it has "worked with the EPA to provide them with all data that they need to make a science-based registration decision that satisfies the applicable statutory criteria and addresses the concerns highlighted by the 9th Circuit Court earlier this year. BASF has a strong interest in defending our Engenia herbicide registration and are evaluating our legal options. We remain fully committed to ensuring growers have access to the crop protection solutions they have come to rely on, including Engenia herbicide."

Glyphosate brief filed

Groups suing over EPA's interim registration decision on glyphosate said in their opening brief in the 9th Circuit that EPA's cost-benefit analysis "consists of a single sentence, where EPA completely fails to weigh the substantial costs of registration: among them, costs to farmers from the epidemic of glyphosate-resistant weeds and costs to wildlife exposed to spraying, especially crucial pollinators and iconic Monarchs."

"EPA entirely failed to consider and assess the significant economic costs resulting from widespread glyphosate use," the groups said. "These costs include both glyphosate-resistant weeds and glyphosate drift damage."

Although it announced new measures to address spray drift, including a prohibition on spraying during temperature inversions and other application restrictions, "at no point did EPA actually assess the efficacy of these mitigation measures on which it predicated its determination," the groups' brief said.

Application exclusion zone lawsuit

Attorneys general from New York, Maryland, Illinois, California and Minnesota have sued EPA over its Oct. 30 AEZ rule, which modified a 2015 rule so that the AEZ "it is only applicable and enforceable on an agricultural employer's property and does not extend to adjacent areas, and no longer applies to immediate family members of farm owners," they said in a news release. "The rollback also allows pesticide applications to occur while individuals not employed by the farm are present."

EPA did not justify the changes through use of an adequate cost-benefit analysis, the complaint says. "EPA's analysis of costs and benefits fails to justify the changes to the [AEZ]; the agency's explanation of the basis for these changes runs counter to the evidence before the agency; and EPA has entirely ignored its obligation to identify and address the disproportionately high and adverse effects of this policy change on minority and low-income populations," the complaint says.

States will incur additional compliance and enforcement costs associated with the rule, they said.

"It is likely that any increase in pesticide exposure caused by the final rule will in turn increase uncompensated care costs for public and private hospitals in New York," the lawsuit says.

Asked about the lawsuits, EPA said it does not comment on ongoing litigation.

Sterigenics Sued Over Ethylene Oxide Releases in New Mexico
Maya Earls, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/sterigenics-sued-over-ethylene-oxide-releases-in-new-mexico

Sotera Health Co. and related companies are illegally releasing excess amounts of ethylene oxide from a plant in New Mexico that puts nearby residents at risk, the state says in a lawsuit filed Tuesday.

Ethylene oxide is a toxic gas used to sterilize medical equipment. The gas is known to cause cancer, including lymphoma, leukemia, and breast cancer.

Ethylene oxide released by Sotera Health from its plant in Santa Teresa, N.M., has significantly deteriorated air quality in the surrounding communities, and has contributed to increased health risks, according to the complaint filed in the New Mexico Third Judicial District Court.

Sterigenics U.S. LLC operates the plant, which is currently owned by Sotera Holdings. Sotera Health Co. is the parent company of the other defendants.

The companies reported releasing ethylene oxide from its plant through controlled sources, such as sterilizer vacuum pumps and acid-water scrubbers. But they have also caused uncontrolled releases due to the lax oversight of sterilization operations, the lawsuit says.

A 2014 National Air Toxics Assessment released by the Environmental Protection Agency found residents in the area likely suffering the most exposure to the gas have a cancer risk in excess of the national average, according to the complaint.

Sterigenics is facing another lawsuit over the gas filed by a group representing warehouse workers in Georgia. The company announced in 2019 it would permanently close its Willowbrook, Ill., plant following a dispute with residents and state lawmakers over ethylene oxide emissions.

Causes of Action: Public nuisance, strict liability; negligence; New Mexico Unfair Practices Act.

Relief: Declaratory and injunctive relief; punitive damages; civil penalties; attorneys' fees and costs.

Response: Sotera Health hasn't immediately responded to a request for comment.

Attorneys: The New Mexico Attorney General's Office represents the state.

The case is New Mexico v. Sterigenics U.S. LLC, N.M. Dist. Ct., No. D-307-CV-2020-02629, 12/22/20.

EPA Publishes Interim Guidance on Destroying and Disposing of Certain PFAS and PFAS-Containing Materials
Lynn L. Bergeson and Carla N. Hutton, Bergeson & Campbell Blogs
http://www.tscablog.com/entry/epa-publishes-interim-guidance-on-destroying-and-disposing-of-certain-pfas

On December 22, 2020, the U.S. Environmental Protection Agency (EPA) announced the availability of new interim guidance on destroying and disposing of certain perfluoroalkyl and polyfluoroalkyl substances (PFAS) and PFAS-

containing materials for public comment. 85 Fed. Reg. 83554. The interim guidance outlines the current state of the science on techniques and treatments that may be used to destroy or dispose of PFAS and PFAS-containing materials from non-consumer products, including aqueous film-forming foam for firefighting. According to EPA's December 18, 2020, press release, the interim guidance assembles and consolidates information in a single document that generally describes thermal treatment, landfill, and underground injection technologies that may be effective in the destruction or disposal of PFAS and PFAS-containing materials. To help ensure informed decision-making, the technology-specific information describes uncertainties and how those uncertainties should be weighed given situation-specific factors, such as the waste's physical phase (liquid, solid, gas).

As required by the National Defense Authorization Act for Fiscal Year 2020 (FY20 NDAA), the interim guidance addresses PFAS and PFAS-containing materials including:

Aqueous film-forming foam (for firefighting);
Soil and biosolids;
Textiles, other than consumer goods, treated with PFAS;
Spent filters, membranes, resins, granular carbon, and other waste from water treatment;
Landfill leachate containing PFAS; and
Solid, liquid, or gas waste streams containing PFAS from facilities manufacturing or using PFAS.
EPA notes that the interim guidance is not intended to address destruction and disposal of PFAS-containing consumer products, such as non-stick cookware and water-resistant clothing. EPA is also providing guidance on testing and monitoring air, effluent, and soil for releases near potential destruction or disposal sites. The interim guidance captures the significant information gaps associated with PFAS testing and monitoring and identifies specific research needs to address the FY20 NDAA requirements. Comments are due February 22, 2021.

Stop EPA from Limiting State Pesticide Restrictions as Corporate Deception on Hazards Continues
NA, Beyond Pesticides
https://beyondpesticides.org/dailynewsblog/2020/12/stop-epa-from-limiting-state-pesticide-restrictions-as-corporate-deception-on-hazards-reported/

The toxic herbicide dicamba is once again at the center of a larger story about states' authority to regulate pesticides more stringently federal dictates and a response to corporate corruption in the marketing of pesticide products. The Trump EPA (U.S. Environmental Protection Agency) has just made it much harder for state regulations to be more protective than federal rules. It did so via a footnote embedded in dozens of pages of regulatory documents related to EPA's registration of three new dicamba products.

Tell the Biden transition team that EPA must respect states' rights to protect people and property in their states.

Meanwhile, a report by the Midwest Center for Investigative Reporting found Monsanto and BASF, a German chemical company that worked with Monsanto to launch the system coupling dicamba with resistant crops, knew their dicamba herbicides would cause large-scale damage to fields across the U.S., but decided to push them on unsuspecting farmers anyway, in a bid to corner the soybean and cotton markets with their dicamba-resistant seeds.

For nearly 30 years, state regulators have used Section 24 ("Special Local Needs" section) of FIFRA, the Federal, Insecticide, Fungicide and Rodenticide Act—the law that gives EPA authority to regulate pesticides—to establish specific restrictions, on use of federally registered pesticide products, that go beyond the restrictions mandated by EPA. Like other federal laws, FIFRA allows states room for stronger regulation. EPA has long allowed states to add to the edicts of federal pesticide labels in order to protect workers, crops, and/or the environment under particular local circumstances. However, Section 24 had historically been used to expand allowed labeled uses of pesticides when existing products with their crop restrictions are no longer effective.

Two subsections of Section 24 are at issue. Section 24(a) allows states to "regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use

prohibited by this Act." Section 24(c) allows states to "provide registration for additional uses of federally registered pesticides formulated for distribution and use within that State to meet special local needs in accord with the purposes of this Act and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator."

Although a straightforward reading of FIFRA leads to the conclusion—one that EPA is now supporting—that 24(a) should be used to limit a pesticide's use, and 24(c) to expand uses, EPA has never issued regulations or guidance for the application of 24(a) and has historically directed states to 24(c) when they sought to restrict a pesticide's use, as several states have done with dicamba. For several decades, EPA has construed 24(c) to mean that states can establish more-restrictive regulations than the federal. Indeed, in 1996, it published this as guidance for states. In the past few years, especially, as EPA has failed to enact constraints on the uses of dicamba, which has caused massive devastation to nontarget crops and trees (as well as to wildlife), many states have moved to establish additional controls on the pesticide's use.

Since EPA has never published regulations or guidance concerning use of Section 24(a), it is clear that the current action is designed to limit the ability of states to restrict the use of pesticides when EPA has failed to ensure safety.

A number of states, including Indiana, Minnesota, Missouri, South Dakota, North Dakota, Illinois, and Arkansas, have instituted restrictions on dicamba use that surpass those accompanying the federal registration of the compound. Texas, Iowa, Georgia, Kentucky, Alabama, and North Carolina are all eyeing 24(c) requests for stricter-than-federal controls for tighter application windows, additional training requirements, better record keeping, new fine structur

Trump EPA Gives Neurotoxic Insecticide Chlorpyrifos Another Thumbs Up, Ignoring Brain Effects in Children
Blog, Beyond Pesticides
https://beyondpesticides.org/dailynewsblog/2020/12/trump-epa-gives-neurotoxic-insecticide-chlorpyrifos-another-thumbs-up-ignoring-brain-effects-in-children/

The litany of parting shots by the waning Trump administration got longer on December 4, when the Environmental Protection Agency (EPA) announced a proposed interim decision on the very toxic pesticide chlorpyrifos, functionally continuing its registration for many agricultural uses. The interim decision purports to put in place new limitations on use of this pesticide, but they are wholly inadequate to the threat this compound represents — to young children, most concerningly, as well as to farmworkers, critical species and ecosystems, and the public. Chlorpyrifos should not be re-registered for use — i.e., its sale and use should be banned altogether, as Beyond Pesticides has asserted for years.

Chlorpyrifos is an organophosphate pesticide used on scores of food crops, for mosquito (and other pest) control, and for some turf management (golf courses, especially). It has been demonstrated to be highly neurotoxic, especially to young children, leading to impaired cognitive function, developmental delays, lower IQs, attention deficit disorder, and a variety of other pervasive developmental and learning disorders. The essence of the compound's toxicity to developing brains lies in its function as a cholinesterase inhibitor; chlorpyrifos binds to the receptor sites for acetylcholinesterase (AChE), an enzyme that is critical to normal nerve impulse transmission. In so doing, chlorpyrifos inactivates AChE, damages the central and peripheral nervous systems, and disrupts neurological activity. In addition to its neurotoxic impacts, the compound is associated with harmful reproductive, renal, hepatic, and endocrine disrupting effects.

The Center for Food Safety (CFS) writes: "The interim 'decision' leaves much undecided, including safety thresholds for chlorpyrifos exposure and possible mitigation measures, which EPA is currently negotiating with chlorpyrifos manufacturers." CFS also excoriates this latest decision: "EPA has long been aware of the pesticide's toxicity. While most residential uses of chlorpyrifos were banned nearly two decades ago, the agency permitted its continued use in agriculture, creating a double-standard in which rural kids and farmworkers are left unprotected. People are exposed to chlorpyrifos in food and water, but also through inhalation of spray drift and vapor."

CFS legal director George Kimbrell commented on the interim decision: "True to form, the Trump Administration has placed corporate dollars over public health. If allowed to stand, its proposal to continue registering this neurotoxic

insecticide would cause irreparable harm to farmworkers and future generations. Everything possible must be done to ensure the Biden Administration reverses this proposal and once and for all bans this pesticide."

Having covered chlorpyrifos for many years, Beyond Pesticides concurs. It has reported on the tortuous path of EPA's relationship, as well as legislative, legal, and state responses, to chlorpyrifos. In April 2019, Beyond Pesticides provided a timeline of relevant developments whose highlights are worth reviewing:

2001: EPA negotiates "successful" cancellation of chlorpyrifos for residential use

2007: Pesticide Action Network North America (PANNA) and Natural Resources Defense Council file petition requesting EPA revoke all tolerances for chlorpyrifos

2015: Obama administration proposes revocation of all tolerances for chlorpyrifos

2016: EPA's revised human health risk assessment does not change the proposal to ban chlorpyrifos; Donald Trump is elected president

2017: Scott Pruitt reverses order; a coalition of environmental groups led by Earthjustice promptly sues EPA

2018:

June: Hawaii becomes first state in U.S. to outright ban chlorpyrifos, effective 2022

August: court orders chlorpyrifos ban, finding EPA violated the law; Trump administration appeals the ruling

December: Sen. Brian Schatz (HI) introduces the Prohibit Chlorpyrifos Poisoning Students Act

2019:

2019:

May: New York State legislature passes a bill to phase out and eventually ban the use of chlorpyrifos

October: California announces an early 2020 ban on use of chlorpyrifos

December: NYS Governor Cuomo vetoes the legislature's bill, but orders the state Department of Environmental Conservation to ban aerial applications immediately and all uses by 2021, using rule-making rather than legislation; this makes it the third state to ban the toxic compound

2020:

February: Corteva announces it will stop producing chlorpyrifos in 2020 because of declining sales

March: the Maryland legislature passes a limited ban on chlorpyrifos

August: a study reveals that research underpinning chlorpyrifos registration by EPA left critical data out of its analysis, resulting in decades of use of a faulty EPA "safe exposure limit"

September: EPA — contravening scientific evidence and its own findings — announces its conclusion that "the science addressing neurodevelopmental effects [of the insecticide chlorpyrifos] remains unresolved"

Then came this interim decision, which proposes to limit uses of chlorpyrifos in some U.S. regions "to better protect human health and the environment," according to EPA. The decision proposes: (1) "label amendments limiting

application to address potential drinking water risks of concern," (2) "additional personal protection equipment and application restrictions to address potential occupational handler risks of concern," and (3) "spray drift mitigation, in combination with the use limitations and application restrictions identified to address drinking water and occupational risks, to reduce exposure to non-target organisms."

The text of the draft interim decision, which sets out the details, can be accessed (as a .pdf) from EPA's interim decision link. A gander at regional application limits (in the tables in section IV of the draft decision, "Proposed Interim Registration Review Decision") shows that the proposed "limits" continue to allow "high-benefit agricultural uses," in the aggregate, on nine crops across 40 states. This is unacceptable for such a dangerous pesticide, to which people can be exposed through diet, water, landscape uses, and/or "use on public health pests, such as mosquitoes, ticks, and fire ants."

In truth, this decision continues the Trump EPA's anti-science, anti-regulatory track record. One among many examples is that despite the endocrine-disrupting effects of chlorpyrifos (see evidence here, here, and here), this decision asserts: "there is no evidence demonstrating that chlorpyrifos potentially interacts with estrogen, androgen, or thyroid pathways."

Further, Beyond Pesticides reported in 2019 on the administration's concealment of a report showing that 1,399 endangered species are significantly threatened by chlorpyrifos (and two other organophosphate pesticides). This interim decision states, "The proposed mitigation described in this document is expected to reduce the extent of environmental exposure and may reduce risk to listed species whose range and/or critical habitat co-occur with the use of chlorpyrifos. . . . EPA is currently working with the National Marine Fisheries Service (NMFS) under a reinitiated Endangered Species Act (ESA) consultation, and NMFS plans to issue a revised biological opinion for chlorpyrifos in June 2022 [emphasis by Beyond Pesticides]. The U.S. Fish and Wildlife Service (FWS) has not yet completed a biological opinion for chlorpyrifos. EPA will complete any necessary consultation with NMFS and FWS for chlorpyrifos prior to completing the chlorpyrifos registration review." Thus, vulnerable wildlife and habitat will continue to be at risk for at least another year and a half (barring any change by the coming Biden administration), pending a final EPA registration decision on chlorpyrifos.

Beyond Pesticides wrote in 2019, and continues to maintain, that absent effective national protections, "States should ban chlorpyrifos compounds . . . should undertake organic management on state-owned lands, and should support producers in transitioning away from chemical agriculture and to organic, regenerative, and sustainable practices.

It can be hoped that this interim decision is the last one on pesticide registration to emerge from the exiting Trump EPA, given the regulatory wreckage it has wrought generally and on this compound, in particular. Chlorpyrifos is a dangerous, proven neurotoxicant that has dire impacts on children, making EPA's continued permitting of its use an extreme failure of the agency's protective mission. This pesticide should be banned. Public comment on the proposed interim decision is open for 60 days; please tell EPA not to advance uses of chlorpyrifos here.

Spending Bill Provides Nearly $300 Million To Address 'Forever Chemicals'
Iris Myers, EWG
https://www.ewg.org/release/spending-bill-provides-nearly-300-million-address-forever-chemicals

The FY 2021 omnibus appropriations bill passed by Congress Monday night provides nearly $300 million for new investments to address the regulation and cleanup of the toxic "forever chemicals" known as PFAS.

Spending for the Department of Defense, Environmental Protection Agency, U.S. Geological Survey and Food and Drug Administration included in the package will expand PFAS cleanup efforts by the Pentagon, provide the EPA with funding for its regulatory and cleanup priorities, direct agencies to expand data collection and reporting efforts, and direct the FDA to review the safety of PFAS in food packaging.

"We applaud House and Senate appropriators for once again making the PFAS contamination crisis a priority," said Colin O'Neil, legislative director at EWG. "President-elect Biden will have much work ahead of him to address the ballooning PFAS contamination crisis when he takes office. However, this is but a small down payment on what is truly needed to reduce and remediate PFAS pollution. We hope the Biden administration's budget request to Congress will reflect the true cost of addressing the PFAS contamination crisis."

Here is a summary of the major PFAS-related provisions in the FY 2021 omnibus appropriations bill:

Defense

The Defense appropriations bill provides more than $142 million in additional funding for the Defense Department to clean up PFAS contamination at active military installations, for research and development funding for PFAS remediation and disposal, and to phase out PFAS-based firefighting foams.

Overall, funding for the defense environmental restoration accounts, which pays for discretionary cleanup efforts at military sites, increased by $94 million to $1.5 billion, compared to last year. However, the dedicated line-item funding for PFAS within the Defense appropriations bill was slightly lower than the $172 million in last year's bill, which included $100 million in PFAS funding for the Air Force's environmental restoration account.

The bill directs the secretary of defense to report to Congress on costs associated with investigating and cleaning up PFAS at military sites, including the estimated costs after FY 2021.

Military Construction and Veterans Affairs

The bill provides $100 million for the Defense Department to increase the pace of cleanup of PFOA and PFOS ¬– the two most notorious PFAS compounds – at closed military installations, an increase of $40 million compared to last year's bill.

Interior and Environment

The bill provides $49 million for the EPA's scientific, regulatory and cleanup work on PFAS, $10 million above President Trump's budget request.

It also provides $2.7 million for the U.S. Geological Survey's efforts to monitor waterways for PFAS.

Department of Agriculture and the FDA

The bill contains a provision directing the FDA to review the safety of PFAS chemicals in food packaging.

It also contains a provision requiring the USDA to help dairy producers affected by PFAS contamination.

Health and Human Services

The bill includes $1 million in grants to help health professionals better understand health impacts of PFAS exposure and best practices for treatment.

President-elect Biden has pledged to make the PFAS pollution crisis a top priority. He has said he would designate PFOA and PFOS as hazardous substances under the federal Superfund law, which will accelerate the cleanup process at military bases and ensure that polluters pay their fair share of cleanup costs. He has also pledged to end the use of PFAS in many everyday consumer products and to quickly establish a national drinking water standard for PFAS in tap water.

Judge Rules EPA Must Tighten Asbestos Data Collection
Tim Povtak, The Mesothelioma Center

https://www.asbestos.com/news/2020/12/23/epa-asbestos-data-lawsuit/

United States District Judge Edward Chen has ordered the Environmental Protection Agency to improve its data collection on the amount of asbestos and asbestos products that are coming into the country.

Chen issued his ruling Tuesday in San Francisco, stemming from a lawsuit brought against the EPA by a group of nonprofit organizations wanting to close the current asbestos reporting loopholes.

The EPA has contended that the voluntary reporting today by manufacturers, processors and importers provided adequate data.

"EPA has not articulated a satisfactory explanation for its decision not to use its significant enforcement powers to collect information from companies concerning asbestos-related health risks," Chen wrote in his ruling this week. "Whether EPA has adequately assembled all reasonable available information, and what kind of information that EPA did not possess, is at the crux of this case."

Chen has directed the EPA to amend its Chemical Data Reporting rule to improve "information gathering deficiencies" that were identified in his ruling.

Victory for Asbestos Awareness Organizations
The Asbestos Disease Awareness Organization, American Public Health Association, Environmental Health Strategy Center and Environmental Working Group were among the nonprofits that brought the lawsuit against the EPA.

The ruling by Chen was applauded by the organizations.

"EPA cannot do its job to protect the public unless it has basic information on how much asbestos is entering the United States, and where it goes once it is here," said Linda Reinstein, president of the Asbestos Disease Awareness Organization. "This win is an unequivocal rejection of EPA's weak and inadequate protection of public health from a deadly substance."

Asbestos is a naturally occurring mineral that was once lauded for its heat resistance. It was used in hundreds of consumer products. Unfortunately, it also is toxic and can lead to serious health issues, including mesothelioma cancer.

An estimated 100 metric tons of raw asbestos was imported into the U.S. in 2019, the smallest amount since records were first kept in 1910, according to the U.S. Geological Survey Mineral Commodity Summaries Report.

All raw asbestos being imported is used by the chloralkali industry. Imported products with asbestos, though, are not part of the summaries report.

Chen pointed out in his ruling that the EPA's own Science Advisory Committee found the risk evaluation was not adequate and "specifically faulted EPA for relying on voluntary submissions instead of its authority to mandate reporting under [the Toxic Substances Control Act]."

In a hearing earlier this year in court, the EPA said that stricter reporting rules would not produce any new information "that is already known to EPA." It also said it is "aware of all ongoing uses of asbestos and already has the information that EPA would receive if it were to amend the current Chemical Data Reporting rule."

California Attorney General Xavier Becerra called Chen's ruling "a critical first step toward eliminating exemptions that allow this unsafe chemical to harm our communities."

California is one of several states that sued the EPA in 2019 over the lack of asbestos reporting. The others include Massachusetts, Connecticut, Maine, Maryland, New Jersey and Oregon.